82-1158

NO.

In the Supreme Court of the United States

OCTOBER TERM, 1982

TELEDYNE MOVIBLE OFFSHORE, INC.
and ARGONAUT INSURANCE COMPANY
Appellants,

v.

DAN THOMPSON,
Appellee

ON APPEAL FROM THE
SUPREME COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

May the Louisiana worker's compensation statute validly be applied to a claim by a worker against his employer for injury occurring as a result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the resources of the outer Continental Shelf, or is the application of state worker's compensation law to such an injury precluded by the provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b)?

CORPORATE PARTY'S AFFILIATIONS

Appellants have no subsidiaries or affiliates which are publicly held, but appellants are each wholly-owned subsidiaries of Teledyne, Inc.

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JURISDICTIONAL STATEMENT

Appellants, Teledyne Movible Offshore, Inc. and Argonaut Insurance Company, appeal the Judgment of the Supreme Court of the State of Louisiana, rendered on September 7, 1982, rehearing denied October 15, 1982. The Supreme Court held the state worker's compensation act applicable to on job injuries in mineral development on the outer Continental Shelf.

OPINION BELOW

The September 7, 1982, opinion of the Louisiana Supreme Court, which is not yet officially reported, but bears Docket No. 82 C 0339 in that Court, appears as Ap-

pendix A to this Jurisdictional Statement.

JURISDICTION

This suit is one in which there is drawn in question the validity of a state statute on the ground that it is repugnant to a federal statute, and the highest state court in which review may be had has ruled by final judgment in favor of the validity of the state statute. The appellate jurisdiction of this Court is based upon 28 U.S.C. § 1257(2).

THE STATUTE INVOLVED

43 U.S.C. § 1333(b)

> Longshoremen's and Harbor Workers' Compensation Act applicable: definitions
>
> (b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section —
>
> (1) the term "employee" does not include a master or member of a crew of any vessel, or

an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

STATEMENT OF THE CASE

The plaintiff below (hereinafter the appellee) was employed by appellant, Teledyne Movible Offshore, Inc., to perform labor on an immovable platform rig engaged in the production of oil on Vermilion Block 26, located on the outer Continental Shelf in federal waters beyond the coast of Louisiana. While engaged in that activity at that site, appellee received an injury in the course and scope of his employment. Appellee brought an action in Louisiana state court, naming appellants as defendants and seeking recovery of benefits under the Louisiana Worker's Compensation Statute, R.S. 23:1021, *et seq.* Appellants filed in the trial court an Exception of Lack of Jurisdiction over the Subject Matter, asserting that the work-related injury was within the coverage of the Longshoremen's and Harbor Worker's Compensation Act mandated through the provisions of the Outer Continental Shelf Lands Act, and that, accordingly, appellee's exclusive remedy against ap-

pellant was under the Longshoremen's and Harbor Worker's Compensation Act. The trial court overruled the Exception, and appellant applied for writs to the Louisiana Court of Appeal, Third Circuit. That court granted a writ and made it peremptory, sustaining the Exception and dismissing appellee's suit. In reaching its conclusion, the Louisiana appellate court followed its prior decision, *Strange v. Fidelity & Cas. Co. of New York*, 262 So. 2d 799 (3rd Cir., 1972), and a decision by the United States Court of Appeal for the Fifth Circuit, *Smith v. Chevron Oil Co.*, 517 F.2d 1154 (5th Cir., 1975), holding that the Louisiana worker's compensation law could not validly be applied to injuries occurring on fixed platforms on the outer Continental Shelf where the Longshoremen's and Harbor Worker's Compensation Act was made applicable by the provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b).

The Louisiana Supreme Court granted review and reversed the intermediate appellate court, ruling that the Louisiana worker's compensation law applied to claims by employees against their employers for injuries occurring as a result of operations conducted for the purpose of exploring for, developing and removing the natural resources of the outer Continental Shelf. Appellants expressly urged in the state Supreme Court the contention that the application of the Louisiana statute was precluded by the provisions of the Outer Continental Shelf Lands Act and the Longshoremen's and Harbor Workers' Compensation Act, but that argument specifically was rejected by the state's highest court. Rehearing was timely applied for, but was denied.

THE QUESTION PRESENTED IS SUBSTANTIAL

The issue presented by this appeal—whether the Longshoremen's and Harbor Workers' Compensation Act (hereinafter the LHWCA) precludes the application of state worker's compensation laws on the outer Continental Shelf—is one of tremendous import. In 1953, Congress, anticipating the production of minerals from the outer Continental Shelf, made a deliberate decision that the nonseaman members of the work force engaged in extracting minerals from the Shelf would be covered by the LHWCA. Since then, the courts consistently have applied the LHWCA as the sole remedy of Shelf workers on fixed platforms who did not qualify as seamen. Congress made comprehensive amendments to the LHWCA (in 1972) and to the Outer Continental Shelf Lands Act (in 1978), but in neither Act did it alter the language which placed this part of the Shelf work force under the coverage of the LHWCA.

The Louisiana Supreme Court apparently assumed that the only consequence of its decision was that a Louisiana worker would be entitled to the benefits provided by the Louisiana statute where such benefits exceeded those provided by the LHWCA. This, it concluded, produced no "incompatability" between the federal and state schemes.

The court's assumption was totally inaccurate. Application of state worker's compensation could produce "double recovery" by the claimant.[1] More importantly, the

[1] The Louisiana court assumed that there would be no problem of

interjection of state law benefits could disturb the delicate balance between employer and employee rights which Congress has struck in the LHWCA. A worker's compensation scheme is a compromise of rights between worker and employer; the employer accepts liability without fault, but the amount of the employee's recovery against the employer, either directly or indirectly, is limited. A legislative body effecting the compromise must balance its concern for the welfare and safety of the employee with the need to promote the industry in which the employer is engaged. The invasion of state legislative values into a compromise reached by Congress between a unique class of workers and a distinctively federal industry should not be permitted unless the congressional intent to welcome such intrusion is crystal clear. As this Court observed in a somewhat similar case, "(i)t is not the province of state courts to strike a balance different from the one Congress has struck." *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 590 (1979).

These problems—double recovery, and the upsetting of a delicate congressional balance—are not the only ones presented by the application of state worker's compensation law to the outer Continental Shelf. The LHWCA and the state worker's compensation law at issue here both are

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(Footnote 1 continued)
double recovery. At the outset of its opinion, it observed that "(t)here is not here involved the possibility of double recovery of benefits, for when the injured worker received benefits under each compensation act, the employer is allowed credit for benefits paid under one plan against those paid under the other." However, this is not the law, at least in the United States Fifth Circuit. *Landry v. Carlson Mooring Service*, 643 F.2d 1080 (5th Cir., 1981), *rehearing denied* 647 F.2d 1121.

comprehensive schemes which regulate almost every facet of the employer-employee relationship, and the relationships of each to third parties, with respect to the employee's work injuries. There is a plethora of conflicts which are certain to arise—immediately—when the Louisiana and federal statutes are sought to be applied to the same conduct. A few illustrations follow.

(1) Louisiana law permits an attorney to exact a contingent fee from a worker's compensation claimant[2]; the LHWCA prohibits such a fee, and permits an attorney to receive only that fee fixed by the Deputy Commissioner. 33 U.S.C. § 928(e). The United States Fifth Circuit has ruled that a claimant who receives benefits under state law may not deduct from subsequent recovery under the federal act that portion of the amount received under the state act which was paid by the claimant as attorney's fees. *Landry v. Carlson Mooring Service, supra.* The decision below assures that many attorneys will first process claims of Shelf platform workers through the state system, collect contingent fees, and then reprocess the claims through the LHWCA, circuitously subjecting the employer to liability greater than that provided by the federal act.

(2) A worker covered by the LHWCA may not maintain an unseaworthiness action against a shipowner. 33 U.S.C. § 905(b). A worker who is not covered by the

[2] La. R.S. 23:1141 provides that an attorney may receive a fee which does not exceed "twenty per centum of the first ten thousand dollars of any award and ten per centum of the part of any award over ten thousand dollars."

LHWCA may be entitled to proceed against a vessel under the doctrine enunciated in *Sieracki v. Seas Shipping Co.*, 328 U.S. 85 (1946). *See, e.g., Aparacio v. Swan Lake, Inc.*, 643 F.2d 1109 (5th Cir., 1981). If the decision below is permitted to stand, a platform worker on the Shelf may elect to proceed under state law and maintain a seaworthiness action against a support vessel on which he is working, on the theory that such an action is provided by *Sieracki* and since he is not covered by the LHWCA, he is not within the proscription of 33 U.S.C. § 905(b). This would contravene an essential purpose expressed by congressional act. *Gay v. Ocean Transport and Trading, Ltd.*, 546 F.2d 1233 (1977).

(3) A platform worker employed by a contractor (or by a subcontractor)—which is the typical offshore situation—and covered by the LHWCA may bring a third party tort action against the general owner (or general contractor), unless the latter does in fact pay LHWCA benefits to the worker. 33 U.S.C. § 904; *Kozoidek v. Gearbulk, Ltd.*, 471 F. Supp. 401 (D. Md. 1979). Under Louisiana law, a general owner (or general contractor) is immune from a third party tort action by the employee of a contractor (or subcontractor), regardless of whether the general owner (or general contractor) pays compensation benefits to that employee. La. R.S. 23:1061. Is a general owner entitled to immunity under state law even though federal law permits such an action? Would it depend upon whether he first sought compensation benefits from his employe under the LHWCA or under state worker's compensation?

(4) Louisiana law provides substantial penalties (a percentage of the compensation award, together with attorney's fees) for arbitrary failure of an employer or its insurer to pay worker's compensation benefits within a brief period after injury. La. R.S. 22:652, R.S. 23:1201.2. Where a dispute as to entitlement of benefits arises under the LHWCA, that Act provides a comprehensive conciliatory mechanism through the offices of the Director of Workers' Compensation Programs (33 U.S.C. § 928), with a limited penalty thereafter in the form of attorney's fees. If the decision below is allowed to stand, an employer may be placed in the untenable position of subjecting himself to penalties for failure to pay within a fixed period provided by the Louisiana statute, although he is during that period participating in a conciliatory process mandated by federal law and designed to provoke an equitable settlement of the controversy.

(5) Under the LHWCA, compensation of an employee who is partially disabled is based upon the difference between his average weekly wages and his wage earning *capacity;* the obvious federal policy is to encourage the partially disabled to find gainful employment available to them. Under Louisiana law, the same employee may recover the difference between his average weekly wages and the amount he actually earns; if he chooses not to work, he recovers the full amount of compensation benefits. La. R.S. 23:1221(3); *Mayes v. Louisiana-Pacific Corp.*, 379 So. 2d 24 (3rd Cir., 1980).

(6) A worker's compensation settlement under Louisiana law must be approved by a judge. La. R.S. 23:1272. Settlement of a claim under the LHWCA must be approved by the Deputy Commissioner. 33 U.S.C. § 908(i). To avoid additional exposure, the prudent employer will settle the employee's claims under both statutes. Will he be required to provide an adequate consideration for both settlements, thus increasing his liability beyond that contemplated by Congress?

The foregoing list of actual conflicts is not exhaustive, but illustrative; many other situations will arise in which there is a conflict between the federal and state worker's compensation schemes. It is not enough to say that where the statutes conflict, the federal statute will prevail. Where the number of real conflicts is so large, two undesirable results are certain. One is that much judicial energy (and employer resources) must be expended in the judicial process of blending the two laws together. Another is that a prudent employer will nevertheless maintain insurance coverage under both compensation systems, thus adding an unnecessary cost of operations and reducing the employer's resources which will be available for the payment of compensation benefits to the employee.

The employee's advantage in having both statutes apply is illusory. The LHWCA covers nearly every issue between employer and employee, and clearly it will prevail over any differing state procedure. The only time an employee might profit from the dual application of com-

pensation statutes is where the state statute pays greater benefits; however, as this Court remarked in *Sun Ship*, such a "situation will be exceedingly rare." 447 U.S. 724, Footnote 7.

The Louisiana Supreme Court did not allude to any of these important conflicts in articulating its determination that the federal and state compensation schemes were "compatible". Instead, it assumed that the issue was governed by the rationale of this Court's decisions in *Gulf Offshore Company v. Mobile Oil Corp.*, __ U.S. __, 101 S. Ct. 2870 (1981), and in *Sun Ship, Inc. v. Commonwealth of Pennsylvania*, 447 U.S. 715 (1980). However, neither the holdings nor the rationale of those cases are applicable to the issue before the Court.

The issue in *Gulf Offshore Company* was whether state courts could exercise concurrent *judicial* jurisdiction with federal courts over *tort* claims arising on the outer Continental Shelf. Since Congress expressly adopted state tort law as surrogate law on the Shelf, the decision by this Court that state fact-finding is permissible is a logical one. That issue—and the rationale of *Gulf Offshore*—are totally different from those involved in the instant case: where Congress has adopted a federal *substantive* law to govern the outcome of *worker's compensation* claims arising in the federal domain, may state substantive law nevertheless be applied in the same class of cases?

Nor is the *Sun Ship* decision apposite. In *Sun Ship*,

the issue was whether Congress, when it moved the LHWCA ashore in 1972 into areas which previously were exclusive state domain, intended to preempt application of state worker's compensation in that area. That issue is totally different from the issue before this Court: whether Congress, when it prescribed application of federal law in an area of federal domain beyond the territorial boundaries of a state, intended to preclude the subsequent application of state law into that domain.

In *Sun Ship*, federal law was invading a domain traditionally reserved to the states, and considerations of comity loomed large. The balancing of those considerations with the necessity of achieving a desired federal goal calls for application of the doctrine of preemption, with its hallmark rule that preemption is not to be lightly presumed. In the case before this Court, state law is seeking to invade a federal domain—the Shelf is an area of federal sovereignty where state law has never applied of its own force. As Judge Brown observed in *Nations, supra*: "...for the Outer Continental Shelf Congress faced no *Jensen*-like constitutional problems. When OCSLA was enacted, the national government's 'paramount jurisdiction' had already been declared... Congress was unfettered." 483 F.2d 577, 584.

In addition to considerations of comity, *Sun Ship* involved a prejudicial impact upon federally protected workers which is not present here. When the LHWCA moved ashore in 1972, it brought with it a "fuzzy line" between

coverage and noncoverage. A worker injured on land within the territorial boundaries of a state is covered by the LHWCA if he is "engaged in maritime employment," 33 U.S.C. § 902(3), in an area adjoining an area adjoining navigable waters which is "customarily used...in loading, unloading, repairing, or building a vessel," 33 U.S.C. § 903. The extension of the LHWCA inland frequently leaves shore workers uncertain of whether the state or federal compensation remedy applies, precisely the situation which led to the "twilight zone". There is no similar uncertainty about the reach of the LHWCA through the OCSLA, however. The line of demarcation between Louisiana territorial waters and the Shelf is easily ascertainable. Thus, there is, in the instant case, no possibility that employer or employee frequently will entertain any doubt as to the appropriate remedy.

This is not a preemption problem. The issue here is *not* whether Congress intended to "preempt" state law, but whether Congress intended to borrow state law as "surrogate" federal law. The clearest evidence of Congress' intent is the statute itself.

In the OCSLA, Congress makes two provisions for applicable substantive law, *other than worker compensation claims.* In 43 U.S.C. § 1333(a)(1), Congress provides that in all matters (other than worker compensation claims), federal law applies. That section provides in relevant part that

> "To the extent they are applicable and not inconsistent...with...Federal laws...the civil and criminal laws of each adjacent State...are declared to be the law of the United States for...the subsoil and seabed of the outer Continental Shelf."

Congress' plain intent was to adopt state law as "surrogate" federal law in an area of federal domain in which there possibly could be no applicable federal law and in which state law could *not* apply of its own force.

When it spoke, in the next subsection, to the *compensation* claims between employer and employee on fixed platforms, the Congress again was express. 43 U.S.C. § 1333(b) provides that

> "With respect to disability or death of an employee resulting from an injury occurring as a result of operations conducted on the outer Continental Shelf...compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act."

Noticeably absent from this section governing *compensation* claims is any provision comparable to § 1333(a)(2), i.e., any provision that state law not in conflict with federal law should apply to compensation claims on fixed platforms on the Shelf.

The logical conclusion from the straightforward language of the statute is that Congress did not intend for state law to apply as surrogate federal law for compensa-

tion claims on the Shelf. This conclusion is buttressed by practicalities. There is no general federal common law of tort or contract, and maritime common law does not reach every aspect of tort or contract law; hence, there was a need for state law to "fill in the gaps". However, the LHWCA is a pervasive scheme which regulates in precise detail every aspect of an employee's claim against his employer for work related injury, including third party actions, actions against vessels, and indemnification agreements. It "provides a comprehensive scheme for determining who shall pay, how much money, after which occurrences,for what duration, to which persons, and provides the machinery for enforcing those determinations. It provides what record keeping practices must be maintained, penalties for failure to follow its requirements and prohibitions, safety rules and regulations for the protection of the workers that it covers and appropriations for its enforcement." *Nations v. Morris, supra*, at 577. The United States Fifth Circuit emphasized this recently in *Barger v. Petroleum Helicopters, Inc.*, __ F.2d __ (No. 81-2262, rendered November 10, 1982), stating that the OCSLA compensation coverage provision is expansive while the state law extension clause of the Act is considerably narrower. There simply was—and is—no need for the "borrowing" of state law to "fill in the gaps" of an inadequate federal law.

The history of the application of the LHWCA to Shelf injuries after 1953 supports the conclusion that Congress intends that the federal remedy be exclusive. Be-

tween 1953, when the LHWCA was first adopted for Shelf workers, to 1978, when the OCSLA was amended, the United States Fifth Circuit and the Louisiana appellate courts, to which nearly all of these cases go, were unanimous in the view that state worker's compensation laws could not be applied on the Shelf. *Nations v. Morris*, 483 F.2d 577 (5th Cir., 1973), *cert. denied*, 414 U.S. 1071 (1973); *Smith v. Chevron Oil Co.*, 517 F.2d 1154 (5th Cir., 1975); *Goodart v. Maryland Cas. Co.*, 139 So. 2d 567 (4th Cir., 1962); *Crooks v. American Mut. Liab. Ins. Co.*, 175 So. 2d 875 (3rd Cir., 1965); *Strange v. Fidelity & Cas. Co. of New York*, 262 So. 2d 799 (3rd Cir., 1972). When Congress amended the OCSLA in 1978, it made no change (except a style change mandated by the revision of another section of the Act) in that provision of the Act adopting the LHWCA, although it did make substantive changes to 43 U.S.C. § 1333(a)(1), which provides for the application of substantive law to noncompensation claims on the Shelf. The logical conclusion is that Congress was satisfied with the language of 43 U.S.C. § 1333(b) and the way it had been interpreted by the courts.

In sum, the Shelf is a federal domain—beyond state boundaries. State law cannot apply there by its own force. Congress, when faced with the issue of what compensation law should apply within its domain, provided a pervasive and comprehensive federal scheme and pointedly did not adopt state law as "surrogate" as to those issues which the federal scheme did not cover. The plain intent of Congress was that state law was to supplement federal tort and con-

tract law on the Shelf, but that in compensation claims, federal law only—the LHWCA—was to apply.

As the foregoing discussion clearly reveals, the issue is not one of federal preemption, but federal adoption. When one considers workers engaged in extracting federal resources from federal soil under leases granted by the federal sovereign, the dominance of the federal interest in the rights and liabilities of these workers vis-a-vis their employers becomes manifest.

Some of the recent decisions of this Court have reached solutions to preemption problems by applying differently worded tests, such as whether it was the "clear and manifest purpose" of Congress to preempt state law, *City of Philadelphia v. New Jersey*, 437 U.S. 617, 621, n. 4 (1978), or whether application of state law would do "major damage" to "clear and substantial" federal interests. *United States v. Yazell*, 382 U.S. 341,352 (1966). However, we find no precedent in point. This situation has been anticipated.

> "While the significant criteria may be articulated...it is difficult to apply the rationale underlying a decision in one field to the problem in another context...Despite the diversity of preemption problems, the underlying constitutional principles are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter."
> Nowak, Rotunda & Young, *Constitutional Law*, West Pub. Co., 1978, Page 268.

In the instant case, Congress has provided a comprehensive scheme for the regulation of the rights of employer and employee arising out of work related injuries incurred in extracting federally owned minerals from an area of exclusive federal domain, "far beyond even the wildest claim of territorial sovereignty the State of Louisiana might make." *Nations v. Morris, supra,* at 583. Louisiana now has sought to regulate the same rights with an equally comprehensive, but strikingly different compensation scheme. Louisiana's action is an impermissible extension of its laws and an unwarranted intrusion into the federal domain. Appellants respectfully pray that this Court reverse the decision of the Louisiana Supreme Court.

Although the Judgment of the Louisiana Supreme Court remanded the case to the trial court, the Judgment is "final" for the purposes of appeal to this Court. The courts below are bound by the state Supreme Court's determination that state law will apply. The federal issue—whether the state worker's compensation law applies—will necessarily survive the proceedings below. Nothing will preclude application of state law, and there are no other federal questions which may emerge which would permit subsequent appeal to this Court. Reversal of the decision below would terminate this litigation and would relegate the parties to the rightful forum—the Office of Workers' Compensation Programs of the Department of Labor. Finally, a delay in review of this question could inflict great damage upon the federal interest, inasmuch as employers and employees will be forced to adjust their rights under

both competing systems during the long period of time it may take for this case to work its way back to the United States Supreme Court.

CONCLUSION

The question presented by this appeal is substantial and the case is one of first impression. It is respectfully submitted that probable jurisdiction should be noted or review granted alternatively by considering this a Petition for Certiorari pursuant to 28 U.S.C. § 2103.

Respectfully submitted,

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APPENDIX A

(1) Opinion of the Supreme Court of Louisiana rendered in "Dan Thompson v. Teledyne Movible Offshore, Inc., et al", Docket Number 82 C 0339, rendered on September 7, 1982.

SUPREME COURT OF LOUISIANA

DAN THOMPSON

VERSUS 82 C 0339

TELEDYNE MOVIBLE OFFSHORE, INC., ET AL

On Writ of Review or Certiorari,
from the Third Circuit Court of Appeal,
Parish of Rapides, Louisiana.

CALOGERO, Justice.

The issue involved in this case is whether a worker hired in the state of Louisiana and injured while working on a fixed platform located on the outer Continental Shelf beyond the territorial waters of the State of Louisiana is entitled to recover Louisiana Worker's Compensation benefits, in state court, notwithstanding his entitlement to and receipt of benefits under the federal Longshoreman and Harbor Workers' Compensation Act.[1]

Relator Dan Thompson injured his right hand while employed by respondant Teledyne Movible Offshore, Inc. on an immovable platform located on the outer Continental Shelf off the coast of Louisiana.[2]

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[1] There is not here involved the possibility of double recovery of benefits, for when the injured worker receives benefits under each compensation act, the employer is allowed credit for benefits paid under one plan against those paid under the other. Calbeck v Travelers Insurance, 370 U.S. 114, 82 S. Ct. 1196, 8 L Ed.2d 368 (1962). *See also:* Larson, 45 So. Calif. L. Rev. 699, 728-738 (1972).

[2] The outer Continental Shelf includes all submerged lands lying seaward and outside the adjacent state water boundaries, of which the

He sued in Louisiana state court (the Ninth Judicial District Court for the Parish of Rapides) for workers' compensation benefits. His employer and its compensation carrier, Argonaut Insurance Company, filed exceptions of prescrition and lack of jurisdiction over the subject matter. The exception of prescription was abandoned; the district court overruled the exception to the jurisdiction. The Court of Appeal for the Third Circuit granted a writ on application of defendant, and thereafter made it peremptory, sustaining the defendants' exception of lack of subject matter jurisdiction and dismissing plaintiff's suit at his cost.

We granted relator's writ application to consider the issue expressed at the outset of this opinion. 412 So.2d 81 (La. 1982). We determine that there is jurisdiction in the Louisiana state court over the claim involved in this litigation.

Dan Thompson, a Louisiana roustabout, had been employed for approximately one and a half years as a derrick hand for Teledyne Movible Offshore, Inc. out of its New Iberia, Louisiana office. Intercoastal City, Louisiana was his departure point to an immovable platform rig in Vermillion Block 26, approximately four miles off the coast of Louisiana in the federal waters of the outer Continental Shelf. While Thompson was working on the platform on

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(Footnote 2 continued)
subsoil and seabed are subject to United States jurisdiction and control. 43 U.S.C. §1331 (a). Louisiana's historic gulfward boundary extends three marine leagues into the Gulf of Mexico from the coast of Louisiana. La R.S. 49:1.

March 9, 1980, a pipe fell, striking and injuring his right hand. When his employer and compensation carrier resisted his demand for state compensation benefits, he sued them in Rapides Parish.

The district judge, in written reasons for denial of the exception of lack of jurisdiction, relied upon two United States Supreme Court decisions: Gulf Offshore Co. v. Mobil Oil Corp., et al, __ U.S. __, 101 S.Ct. 2870 (1981) and Sun Ship, Inc. V. Commonwealth of Pennsylvania, et al 447 U.S. 715, 100 S.Ct. 2432, 65 L.Ed.2d 258 (1980). The Court of Appeal, in reversing the district court, cited the earlier cases, Smith v. Chevron Oil Company, et al, 517 F.2d 1154 (5th Cir. 1975) and Strange v Fidelity and Casualty Company of New York, 262 So.2d 799 (La. App. 3rd Cir. 1972).

For the reasons which follow, we find that the Louisiana state courts do have subject matter jurisdiction over a claim for Louisiana compensation benefits because of an employment related accidental injury sustained by a Louisiana worker hired in Louisiana for work on a fixed platform outside the territorial waters of Louisiana.

For many decades past, Louisiana courts have entertained worker's compensation suits by Louisiana residents injured outside Louisiana while engaged in employment having a substantial connection with Louisiana. In 1951, this Court expressly approved earlier jurisprudence in that regard, quoting Makane v. New Amsterdam Casualty Co.

199 So 175 (La. App. Orl. 1940) at 178-79 in its decision, Ohlhausen v. Sternberg, 218 La. 677, 50 So.2d 803 (1951):

> Although there is no express stipulation contained in the statute to the effect that it shall have extra-territorial jurisdiction, it has been consistently held by our courts that, if the contract of employment is made within this State, the law will apply even though the employee was injured in another State or in a foreign country. See Hargis v. McWilliams Co., Inc., 9 La.App. 108, 199 So. 88, Festervand v. Laster, 15 La.App. 159, 130 So. 634, and Selser v Bragmans Bluff Lumber Co., La.App., 146 So. 690. And the Supreme Court of the United States has declared that the State courts have power to grant compensation to employees, locally employed, for injuries received outside of its borders. See Bradford Electric Light Co., Inc., v. Clapper, 286 U.S. 145, 52 S.Ct. 571, 76 L.Ed. 1026, 82 A.L.R. 696, and Alaska Packers Ass'n v. Industrial Accident Commission, 294 U.S. 532, 55 S.Ct. 518, 70 L.Ed. 1044.

Therefore, had Thompson been working in another state or even a foreign country under the same circumstances (a Louisiana worker injured in the course of hazardous Louisiana connected employment), he could avail himself of Louisiana's compensation law and have access to our courts if need be. Mattell v Pittman Construction Co., Inc., et al, 180 So.2d 696 (1965), Babineaux v Southeastern Drilling Corp., 170 So.2d 518 (La. App. 3rd Cir. 1965).

This jurisprudence was codified in 1975 with the en-

actment of La. R.S. 23:1035.1 which reads in pertinent part:

> (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this Chapter had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by the Chapter, provided that at the time of such injury
>
> (a) his employment is principally localized in this state, or
>
> (b) he is working under a contract of hire made in this state.
>
> (2) the payment or award of benefits under the workmen's compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this Chapter shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within the time limits set forth in R.S. 23:1209. If compensation is paid or awarded under this act:
>
> (a) The medical and related benefits furnished or paid for by the employer under such other workmen's compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this act had claim been made solely under this act;

> (b) The total amount of all income benefits paid or awarded the employee under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employee under this act had the claim been made solely under this act.

While this Court has not expressly addressed the issue, there have been Louisiana Court of Appeal cases which have prevented a Louisiana worker injured on the outer Continental Shelf off the coast of Louisiana from seeking redress in Louisiana courts, on the theory that the federal presence in the area excluded state jurisdiction. Strange v Fidelity & Casualty Company of New York et al, 262 So.2d 799 (La App. 3d Cir. 1972); Crooks v American Mutual Liability Ins. Co., et al, 175 So.2d 875 (La App. 3d Cir. 1965). Writ refused. "No error of Law in the judgment of the Court of Appeal." 248 La. 372, 178 So.2d 659 (1965). However, in an incisive concurring opinion which may be viewed as prophetic in light of the recent pronouncements of the United States Supreme Court discussed hereinafter, Judge Tate, then a judge of the Third Circuit Court of Appeal of Louisiana said in *Crooks, supra* at 878:

> In summary, I personally feel that the provision in the Outer Continental Shelf Lands Act that a injured employee "shall" be afforded the Longshoremen's remedy means simply that, if he so elects, he shall be afforded such remedy; but it is not intended to bar his resort to the state compensation remedy otherwise applicable because of the state-connected employment relationship in which the state-resident employee is injured.

Little more than a year ago, the U.S. Supreme Court directly addressed the question of whether federal courts have exclusive subject matter jurisdiction in personal injury and indemnity actions arising out of injuries on the outer Continental Shelf. Gulf Offshore Company v Mobil Oil Corp. __U.S.__, 101 S. Ct. 2870 (1981).[3] The Court concluded that the federal *political* jurisdiction to which the Outer Continental Shelf Lands Act (43 U.S.C. §1331 et seq.) is directed did not preclude a state court's concurrent *judicial* jurisdiction over matters traditionally within their province.

The *Gulf Offshore* decision recognized that concurrent jurisdiction (state and federal) is *presumed.* This presumption of concurrent jurisdiction can be rebutted however, by "[1] an explicit statutory directive, by [2] unmistakable implication from legislative history, or by [3] a clear incompatibility between state court jurisdiction and federal interests." *Gulf Offshore, supra* at 2875. The Court concluded that none of these considerations barred a state court's assuming jurisdiction over personal injury or indemnification actions stemming from events occurring on the outer Continental Shelf.

The discussion in *Gulf Offshore* about the text and

[3] In that case respondent Mobil Oil Corporation had contracted with petitioner Gulf Offshore for the performance of certain operations on an offshore drilling platform. During a hurricane evacuation by boat, an employee of Gulf Offshore was injured. He sued Mobil and the boat owner in Texas state court seeking recovery of damages based upon negligence. Mobil sought to third party Gulf Offshore for indemnification. The case did not involve a workers' compensation claim.

legislative history of the OCSLA is applicable to the case at hand. On those points, the Court found that despite the reference to exclusive federal jurisdiction in OCSLA, 43 U.S.C. §1331(a)(1), wherein the Shelf was equated with a landlocked federal area within a state,[4] Congress did not mean by that assertion of political jurisdiction that the federal courts should be the sole forum for adjudicating all controversies arising from operations on the Shelf. Not only have state and federal courts enjoyed concurrent jurisdiction in areas of federal territorial sovereignty, the Court noted, but also, in the case of the Shelf in particular, the legislative history underscores the fact that the Congressional concern was to assure federal political control over the Shelf and its "real property, minerals and revenues, not over causes of action." *Gulf Offshore, supra* at 287.

Furthermore, the Court expressly minimizes the distinction between events happening in another state and events happening in the federal territory of the Shelf by

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[4] OCSLA 43 U.S.C. 1331(a)(1) reads as follows:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, *to the same extent as if the outer Continental Shelf were an area of exlusive Federal jurisdiction located within a State:* Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter. (Emphasis provided)

stating in *Gulf Offshore, supra:*

> That the location of the event giving rise to the suit is an area of exclusive federal jurisdiction rather than another State, does not introduce any new limitation on the forum State's subject-matter jurisdiction. Ohio River Contract Co. v. Gordon...244 U.S. [68] at 72, 37 S.Ct. [589] at 601.

Finally, while 43 U.S.C. §1333(b) states that the LHWCA is applicable to "disability or death of an employee resulting from any injury occuring as a result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf," it does not state that the LHWCA is the only compensation act that can be applied to instances of disability or death to an employee thereon. There is no language of exclusivity in 43 U.S.C.§1333(b). Therefore we conclude that there is no (1) explicit statutory directive, nor (2) unmistakable implication from the legislative history, to bar a state court from exercising concurrent jurisdiction over worker compensation claims arising on the outer Continental Shelf.

The final inquiry under the *Gulf Offshore* test, then, becomes whether there is a clear incompatibility between the application of the Louisiana compensation law, for injuries sustained by a Louisiana worker engaged in Louisiana related work on an immovable platform on the outer Continental Shelf, and the federal interests evidenced in

OCSLA through application of the LHWCA.

The United States Supreme Court found that there exists no incompatibility when a state applies its workers' compensation scheme to *land-based* injuries that fall within the coverage of the LHWCA. Sun Ship Inc. v. Commonwealth of Pennsylvania, et al, 447 U.S. 715, 100 S. Ct. 2432, 65 L.Ed.2d 548, rehearing denied, 448 U.S. 916, 101 S.Ct. 37, 65 L.Ed.2d 1179(1980). The *Sun Ship* Court found that the 1972 deletion from LHWCA §903(a) of the phrase: "[i]f recovery...through workmen's compensation proceedings may not validly be provided by State law," reinforced the Supreme Court's previous interpretation that the LHWCA contemplated federal and state *concurrent jurisdiction.* Calbeck v. Travelers Insurance Co., 370 U.S. 114, 82 S. Ct. 1196, 8 L.Ed.2d 368(1962). The Court in *Sun Ship, supra* at 772 concluded:

> We therefore find no sign in the 1972 amendments to the LHWCA that Congress wished to alter the accepted understanding that federal jurisdiction would coexist with state compensation laws *in that field in which the latter may constitutionally operate under the Jensen doctrine.* (Footnote omitted. Emphasis provided.)

The U.S. Supreme Court's conclusion in *Sun Ship* is the same as that reached earlier by this Court in Poche v. Avondale Shipyards, Inc., 339 So 2d 1212 (1976) in a well-reasoned opinion by Justice Marcus. In the *Poche* opinion, Justice Marcus summarized the historical development of

the LHWCA from *Jensen* to the present.[5]

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[5] Justice Marcus stated in pertinent part at 339 So.2d 1215-1217:

> In 1917, the United States Supreme Court held, in a divided opinion, that a state compensation law could not constitutionally be applied to a longshoreman who was killed aboard a ship in navigable waters while engaged in unloading cargo. Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524, 62 L.Ed. 1086(1917). The Court emphasized that, under the facts of the case, the matter was clearly within traditional admiralty jurisdiction and therefore not subject to the diverse legislation of the various states. The Court noted however, that while "it (is) difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation [sic]. That this may be done to some extent cannot be denied. ..." The rule was announced that state legislation would be permissible unless "it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." In 1917, a majority of the Court felt that this rule was violated when a state provided workmen's compensation to a stevedore injured on navigable waters. That state law could constitutionally apply to longshoremen injured on land was confirmed in State Industrial Commission v. Nordenholt Corp., 259 U.S. 263, 42 S.Ct. 473, 66 L.Ed. 933 (1922).
>
> Thereafter, in Grant Smith-Porter Shipping Co. v. Rhode, 257 U.S. 469, 42 S.Ct. 157, 66 L.Ed. 321(1922), the Supreme Court crossed its own line of demarcation between state and federal jurisdiction and held that, if the nature of an employee's work was of "local" concern," a state compensation act could apply without working a material prejudice to the federal maritime law, even if the injury occurred on navigable water.
>
> In 1927, Congress passed the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C. 901 et seq., which provided a federal compensation remedy for workers injured on navigable waters "*if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.*" 33 U.S.C. 903(a). This language of the act appeared to make the state and federal compensation remedies exclusive and engendered much con-

In *Poche, supra* at 1217, we concluded that even

(Footnote 5 continued)

fusion over which cases involved interests that were "maritime but local" and thus cognizable under state as opposed to federal law.

In Davis v. Department of Labor & Industries, 317 U.S. 249, 63 S.Ct. 225, 87 L.Ed. 246(1942), the Supreme Court coined the phrase "twilight zone" to describe the shadowy area in which it was difficult to determine whether state or federal law should apply. In this area, if a worker elected to apply for state benefits his choice would be upheld and the application of state law presumed constitutional. In subsequent cases, the Court made it clear that an area of concurrent jurisdiction existed wherein workers injured on navigable waters, even when their occupations were traditionally maritime, could pursue remedies available under state compensation laws. (Citations omitted.) Although dicta in the Supreme Court's decision in Pennsylvania Railroad Co. v. O'Rourke, 344 U.S. 334, 73 S.Ct. 302, 97 L.Ed. 367 (1953) referred to the LHCA as an exclusive remedy, the Court's comments were made in a case involving a contest between two federal compensation systems (FELA and LHCA). Moreover, in Calbeck v. Travelers Insurance Co., 370 U.S. 114, 82 S.Ct. 1196, 8 L.Ed. 368 (1961), the Court judicially excised the troublesome clause in the LHCA "if recovery...may not validly be provided by State law," which had created the implication that state and federal compensation systems were exclusive. The Court held that LHCA benefits would be available for all workers injured on navigable waters, whether or not a particular injury might also have been within the constitutional reach of a state compensation act. In so ruling, the Court did not suggest that the availability of federal benefits thereby excluded the operation of state law, but rather stated that its decision was consistent with *Davis* and the twilight zone concept.

...What can be gleaned from an examination of these cases is that the United States Supreme Court has made it clear that state compensation laws can be constitutionally applied concurrently with the federal compensation system to some, if not all, categories of maritime workers. While the Court has never overruled *Jensen*, it has demonstrated that the uniformity of the federal maritime law is not materially prejudiced by the operation of state compensation remedies even in areas where the federal law is also applicable. ...

though the United States Supreme Court had not overruled *Jensen*, its applicability had been confined to its facts (suits relating to the relationships of vessels, "plying the high seas and our navigable waters, and to their crews"), so that there was "no constitutional impediment to the concurrent operation of the LHWCA and Louisiana Workmen's Compensation Act with respect to injuries sustained on land in the course of new ship construction."

Furthermore the case now before us does not involve longshoremen or historically maritime workers. Rather this plaintiff is like the plaintiff in *Crooks*, the case which spawned Judge Tate's farsighted concurrence; Thompson is an oil worker who may perform essentially the same nonmaritime duties on land or alternatively on an offshore site. Therefore the application of state law would not "work material prejudice to the characteristic features of the general maritime law, or interfere with the proper harmony and uniformity of that law in its international and interstate relations." *Crooks, supra* at 879.

Defendants' counsel argues that neither *Gulf Offshore*, nor *Sun Ship*, nor *Poche* are applicable to the case at hand. *Gulf Offshore*, they argue, should be limited to the application of state law where it is surrogate federal law. However, there is nothing in *Gulf Offshore* at variance with affording state court jurisdiction on the Shelf, *and* the application of state compensation law. As stated earlier, the only potential barrier is the question of whether the state compensation scheme is incompatible with the LHWCA.

That question has been resolved clearly in this Court's *Poche* decision and most recently by the U.S. Supreme Court in *Sun Ship*.

State and federal compensation schemes may coexist on land and in the territorial waters of Louisiana. Malone and Johnson, Workers' Compensation §411, 14 La. Civ. Law Treatise 336 *et seq.* It is argued, however, that the co-existence of federal and state compensation schemes within Louisiana territory does not support their co-existence beyond the state's territorial waters, the contention being that in the latter situation there is an incompatibility with federal interests. We do not find any incompatibility.

Plaintiff admits that the benefits due under the federal and state compensation laws may be different.[6] But such a difference does not constitute incompatibility. As the Court in *Sun Ship* remarked, 447 U.S. at 725:

> we are not persuaded that the bare fact that the federal and state compensation systems are different gives rise to a conflict that, from the employer's standpoint, necessitates exclusivity

[6] Under the LHWCA, plaintiff is entitled to a scheduled payment for his injury, limited to a maximum of thirty weeks of compensation, regardless of whether it produces a permanent and partial disability and impairment of earning capacity. Potomac Electric Power Company v. Director, __U.S.__, 101 S.Ct. 509(1980). Under the Louisiana compensation law, he may be entitled to greater benefits, for permanent and partial disability. In this regard the Louisiana Act provides for payment of sixty-six and two thirds (66 2/3) of the difference between his present wages and the wages he was earning at the time of the accident up to a maximum of 450 weeks.

for each compensation system within a separate sphere.

It is significant and we are impressed by the fact that the United States Supreme Court determined that while the emphasis in the LHWCA was on establishing a federal minimum to upgrade compensation benefits, there was no indication that Congress was concerned about a potential disparity between "adequate federal benefits and *superior* state benefits." *Sun Ship, supra* at 723-724. Furthermore, the Court commented *supra* at note 8, that in the case of recovery under both compensation schemes, one would be credited against the other to avoid double recovery.

We conclude that the LHWCA is not the exclusively applicable workers' compensation statute for injuries occurring on the outer Continental Shelf. Such exclusivity is neither mandated by federal statute, by federal legislative history, or by incompatibility with state law. Furthermore, the recent United States Supreme Court decisions effectively invite the state courts to apply state law in matters arising on the outer Continental Shelf if otherwise within the subject matter jurisdiction of the state court. Absent any federal prohibition and consistent with the public policy of the state of Louisiana, Louisiana state courts have subject matter jurisdiction over state compensation litigation resulting from work performed on fixed oil platforms on the outer Continental Shelf. Any reticence to assume jurisdiction and apply the Louisiana workers' compensation statute heretofore expressed by inferior Loui-

siana courts was prompted by perceptions of the exclusivity of federal law. Such perceptions are not valid in light of the *Gulf Offshore* and *Sun Ship* decisions of the United States Supreme Court.

Therefore, we find that this plaintiff, a Louisiana worker injured while engaged in Louisiana connected employment on a fixed platform on the outer Continental Shelf (outside the territorial waters of Louisiana) may sue in Louisiana state court under La. R.S. 23:1021 *et seq.* and seek benefits thereunder.

Decree

Accordingly, we reverse the Court of Appeal's dismissal of the plaintiff's action for lack of subject matter jurisdiction, reinstate the district court's judgment overruling the defendants' exception, and remand the case to the district court for further proceedings.

COURT OF APPEAL JUDGMENT REVERSED; DISTRICT COURT'S OVERRULING DEFENDANTS' EXCEPTION AFFIRMED: REMANDED

XXX

APPENDIX B

(1) Order of the Supreme Court of Louisiana denying Application for Rehearing in "Dan Thompson v. Teledyne Movible Offshore, Inc., et al", Docket Number 82 C 0339, entered on the 15th day of October, 1982.

B-1

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE
NEWS RELEASE # 109

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On October 15, 1982, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the cases listed below:

REHEARINGS GRANTED:

81-KA-1268 State of La. vs. Willie A. Thomas

81-KA-2442 State v. David D. Lewis

81-C-3251 Joseph B. Brown v. Douglas White, et al

REHEARINGS DENIED:

81-KA-1771 State v. Don Jordan
MARCUS, WATSON & LEMMON, J.J., would grant a rehearing.

81-C-1923 Gloriadine B. Gladstone v. American Auto. Assn., Inc., et al
WATSON, J., would grant a rehearing.

81-KA-2015 State v. Joe Lewis Perry
CALOGERO & DENNIS, J.J., would grant a rehearing.

81-KA-2418 State v. Linwood West
DIXON, C.J., & CALOGERO, J., would grant a rehearing.

81-KA-2643 State v. John Wayne Tonubbee
WATSON, J., would grant a rehearing.

81-KA-2988
C/W State v. David Lefevre
81-KA-3034

81-C-3097 Raymond J. Hebert v. Cournoyer Oldsmobile-Cadillac, GMC, Inc, et al
C/W
81-C-3136 Hebert v. Cournoyer Oldsmobile-Cadillac, GMC, Inc., et al (Two Applications)
MARCUS, DENNIS & BLANCHE, J.J., would grant a rehearing.

81-KA-3151 State v. Christine Raymo
MARCUS & LEMMON, J.J., would grant a rehearing.

81-C-3239 LeBlanc v. State of La., and the La. Dept. of Highways
MARCUS, BLANCHE & LEMMON, J.J., would grant a rehearing.

81-KA-3295 State v. Darryl Jett

82-KA-0004 State v. Richard Lee Washington

82-KA-0030 State v. Eugene Bradford, Jr.

82-KA-0047 State v. Robert Jackson

82-K-0056 State v. Charles Lee Rogers
MARCUS & LEMMON, J.J., would grant a rehearing.

82-KA-0118 State v. Charles Ray McCray
CALOGERO, J., would grant a rehearing.

82-KA-0148 State v. Keith D. Elliot
C/W
82-KA-0149

82-KA-0196 State v. Gary D. Filhoil

82-KA-0197 State v. Floyd Lee Pearson

82-KA-0201 State v. Jacquelyn Jackson
DIXON, C.J., CALOGERO, & LEMMON,

J.J., would grant a rehearing.

82-KA-0208 State v. Joseph K. France

82-KA-0281 State v. Ronald Burnett

82-KA-0323 State v. Ardis Gage

82-C-0326 Johnny Hammond v. Fidelity & Casualty Co. of New York
MARCUS, BLANCHE & LEMMON, J.J., would grant a rehearing.

82-C-0339 Dan Thompson v. Teledyne Movible Offshore, Inc., et al

APPENDIX C

(1) Notice of Appeal to the Supreme Court of the United States filed October 26, 1982.

SUPREME COURT OF LOUISIANA

DAN THOMPSON,

Appellee

VS. NO. 82 C 0339

TELEDYNE MOVIBLE OFFSHORE, INC., ET AL,

Appellants.

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that TELEDYNE MOVIBLE OFFSHORE, INC. and ARGONAUT INSURANCE COMPANY, appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Louisiana reversing the Third Circuit Court of Appeal's dismissal of the plaintiff's action for lack of subject matter jurisdiction and reinstating the district court's judgment overruling defendants' Exception to Subject Matter Jurisdiction entered in this action on September 7, 1982, and having become final on October 15, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

JOEL E. GOOCH

Attorney for TELEDYNE MOVIBLE OFFSHORE, INC. and ARGONAUT INSURANCE COMPANY, Appellants.

1015 St. John Street
Post Office Drawer 3768
Lafayette, Louisiana 70502
(318) 233-5056

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Notice of Appeal to the Supreme Court of the United States has been served on plaintiff and appellee, DAN THOMPSON, through his counsel of record, ROBERT L. BECK, JR., by depositing same in a United States Post Office with first class postage prepaid, addressed to ROBERT L. BECK, JR. at his Post Office address, Post Office Box 222, Alexandria, Louisiana, 71301, this 26th day of October, 1982.

JOEL E. GOOCH